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UNITED STATES DEPARTMENT OF AGRICULTURE,
FOREST SERVICE.

GIFFORD PINCHOT, Forester

INSTRUCTIONS REGARDING GRAZING TRESPASS.

SUPERSEDES ALL PREVIOUS ORDERS AND INSTRUCTIONS ON THIS SUBJECT.

MAY 15, 1909.

To Forest officers:

Hereafter, the procedure in all cases of grazing trespass upon the National Forests will be as follows:

IN CIVIL CASES.

The Forest officer upon discovering a grazing trespass should take immediate steps to protect the Forest from injury. The owner of the stock should be ordered to remove it at once, or, if the situation is urgent, the Forest officer may remove the stock in any reasonable way that does not injure it physically.

A distinction should be made between (a) unpermitted stock and (b) permitted stock.

(a) Forest officers may drive unpermitted stock from any portion of the Forest upon discovery of its presence, or they may allow the owner or herder a reasonable time to remove it; but if he refuses to go, the person in charge of the stock may be arrested and the stock removed from the Forest. (See procedure in criminal cases.)

(b) Permitted stock may be removed from any portion of the Forest not allotted to it, but the permit can not be canceled or the stock removed from the area allotted to it without authority from the District Forester.

The Forest officer who discovers trespassing stock should take such action as is necessary to protect the Forest; and, as soon as possible, prepare a report in duplicate on Form 856, to be submitted to the Supervisor. This report should contain clear-cut, definite statements upon the following points: The inclusive dates upon which the stock was in trespass; actual or approximate number of stock grazed in trespass and method of determination; brands or earmarks of stock and recorded ownership of same; location of area trespassed upon by legal subdivisions, or a definite description by local landmarks; whether Forest boundaries were properly marked at point of trespass or not, and whether trespasser has ever been advised of the exact location of the Forest boundary; kind of monuments used to mark the boundary and the distance apart; the names and addresses of all witnesses having knowledge of the facts, together with a brief synopsis of their testimony. Should there be witnesses who will not give evidence, a brief synopsis of the facts to which they can testify should be submitted. All questions contained in the printed form should be answered. The data should be complete, even though insert sheets be used in the report. The Forest officer making the report should then add his own recommendation as to the terms and methods of settlement and forward to the Supervisor. If necessary, the report should be accompanied by a map showing the location of the area trespassed upon.

Upon receipt of the report the Supervisor will consider it carefully, and, if he thinks a good case has been presented against the trespasser, he will advise him by registered letter of the nature of the report, informing him that he will be allowed ten days from the receipt of the letter in which to state his version of the facts. After such statement has been made, or in case the alleged tres-

passer ignores the notice, after the ten days, or a reasonable time, has expired, the Supervisor, if in his opinion a trespass has been committed, will determine the amount of injury which the Forest has sustained. No report of a grazing trespass should be forwarded to the District Forester until the trespasser has had an opportunity to present his version of the facts.

In cases of innocent or unintentional trespass the trespasser should be charged only the value of the forage consumed and herbage destroyed.

In case of willful trespass, the fact that the trespasser has not agreed to handle his stock in a manner to prevent damage to the Forest, or to aid in the enforcement of the regulations, or in extinguishing Forest fires, should be considered and the damage determined as follows:

(a) Actual market value of the forage consumed or destroyed; (b) damage to the Forest growth, to other permittees, and to watersheds of streams; (c) exemplary or punitive damages in cases where such willful trespasses are accompanied by circumstances showing malice, or wanton or reckless indifference to the rights of the United States, and especially in cases of repeated willful trespass.

After having given due consideration to the statement of the trespasser and having determined the compensation due the Government, the Supervisor will submit the report and all other papers in the case, together with his recommendation, to the District Forester. Upon receipt of instructions from the District Forester regarding the action to be taken in the case, if payment of damages is required, a letter of transmittal (Form 861) should be presented to the trespasser and a duplicate sent to the District Forester. The use of the blank proposition of settlement (Form 208) will be discontinued. In no case will the

amount required in settlement of a trespass be designated or referred to as a fine.

A card record should be prepared and a properly marked folder containing the duplicate report and all other papers in the case should be placed in the files.

IN CRIMINAL CASES.

The Secretary of Agriculture has no power to dismiss criminal cases; and a proposition of settlement submitted with the understanding that, if accepted, criminal proceedings for the trespass will be waived, will be rejected. No proceeding looking to criminal prosecution should be taken or threatened by any Forest officer without specific authority from the District Forester or Law Officer, except as provided under this head in cases where immediate arrest is necessary. Under ordinary circumstances settlement should be required as provided in civil cases, and criminal action should be recommended only in cases in which settlement is impossible.

In cases where immediate action is necessary in order to protect the Forest from damage, or in any clear case where the trespasser is liable to escape if not arrested at once, the ranger will place the trespasser under arrest if he is detected in the act of committing a trespass, will notify the Supervisor at once, advising him of the need for immediate action and of the evidence against the trespasser, and will notify the United States Commissioner before whom the hearing will be held. He will also secure evidence upon all of the points mentioned under the head of civil cases. He will immediately take the trespasser before the proper Commissioner, swear to a complaint, represent the Forest Service at the hearing, and hold the trespasser for disposition according to the instructions of the Commissioner. After the case has been acted upon

by the Commissioner the ranger will submit full reports upon the proper forms, as in a civil case, to the Supervisor, including a statement regarding the urgency of the need for the arrest, and the decision and rulings of the Commissioner.

The Supervisor upon receipt of the ranger's preliminary report should endeavor to attend the hearing before the Commissioner as a representative of the Forest Service, or, failing in that, should give the ranger full instructions relating to the management of the case, approving or disapproving the ranger's action in making the arrest. As soon as the case before the Commissioner has been decided and the ranger has submitted full reports upon the proper forms, the Supervisor should consider, approve, and record them in the proper manner and forward all papers in the case to the District Forester for action, adding such recommendations as are necessary, and stating in full all rulings and decisions made by the Commissioner, after which he should await instructions from the Law Officer before proceeding further.

In all cases where a trespasser has paid the damages assessed against him, or has paid the fine imposed upon him by the court as a penalty for having grazed stock upon the National Forest in trespass, the case will be closed without prejudice, and his subsequent applications for grazing permits upon the National Forest may be considered upon their merits.

The attention of all Forest officers is called to the fact that, where information is furnished to the Service relative to trespass upon the National Forests or violation of the laws and regulations for the use of the National Forests, it should always be considered as strictly confidential. Such information, without which the Forest Service often could not successfully determine the truth or falsity of the

charges made, should never be subject to idle gossip or discussion in public where it can be used to the injury and distress of the person furnishing it.

These instructions amend the instructions given in The Use Book for 1908 and supersede all previous instructions regarding grazing trespass.

GIFFORD PINCHOT,

Forester.





